IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2664 of 2004
with
FIRST APPEAL No 2665 of 2004
with
FIRST APPEAL No 2707 of 2004
with
FIRST APPEAL No 2708 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

SPL.LAQ OFFICER

Versus

RATHOD GANESHBHAI KHODABHAI (SINCE DEC'DTHRO'HEIRS & LRS)
AND OTHERS

Appearance:
1. First Appeal Nos. 2664,2665,2707 & 2708 of 2004
MR ARUN D OZA GOVERNMENT PLEADER with MR AY KOGJE
AGP for Appellant
..... for Respondent No. 1,2
MR AMIT C NANAVATI for Respondent No. 1/1-1/2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 06/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Since all these appeals are directed against the common judgment and award dated 4.7.2001 of the learned Assistant Judge, Mehsana, in relation to acquisition of four parcels of land under the same notification issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and since common questions of fact and law are involved, these appeals are disposed of by this judgment.

2. The notification under Section 4 of the Act was published on 2.9.1993. The State Government acquired the lands belonging to the respondents herein for Narmada Canal Project. The Land Acquisition Officer made an award for compensation @ Rs.1.50 per sq. mtr. for irrigated land and @ Rs.1.00 per sq. mtr. for non-irrigated land. Aggrieved by the said award, the respondents got references made and claimed compensation @ Rs.20/- per sq. mtr. The respondents contended before the Reference Court that the lands were irrigated lands and the respondents were taking three crops during the year, including commercial crops like rice, castor seeds, muster seeds and cotton seeds etc. The respondents also contended that the lands were situate in developed area and were capable of being put to non-agricultural use also. The respondents also contended that there were educational institutions, bus facility, water and electric facilities etc. near the lands in question. The respondents also relied upon the judgment of the Reference Court in respect of the lands of village Nayka acquired under the notification dated 2.2.1992 under Section 4 of the Act wherein the Reference Court awarded compensation @ Rs.10/- per sq. mtr. including the compensation awarded by the Land Acquisition Officer in that case. A copy of the judgment of the Reference Court in the land acquisition references pertaining to village Nayka was produced at Exh.11.

3. After hearing the learned advocates for the parties and after considering the oral and documentary evidence on record, the Reference Court in the present group found that village Nayka is situate at the southern side of the lands under acquisition and also considered the lands of village Nayka as well as the lands in

village Baspa as having the same potentiality. The notification for the lands of village Nayka under Section 4 of the Act was published on 2.2.1992, whereas the notification under Section 4 of the Act in respect of the lands under consideration was published on 2.9.1993. Hence, after considering the fact that there was time-gap of one year (one year and seven months, to be precise), the Reference Court enhanced compensation @ 10% and came to the conclusion that the claimants in the present case are entitled to compensation @ Rs.11/- per sq. mtr. Since the lands in question are irrigated lands and since the Land Acquisition Officer had awarded compensation Rs.1.50 per sq. mtr., the Reference Court awarded additional compensation @ Rs.9.50 per sq. mtr. The increase of 12% under Section 23 (1-A) of the Act and 30% solatium also came to be awarded by the Reference Court. Moreover, interest under Section 28 of the Act has also been awarded @ 9% per annum from the date of taking possession for one year and thereafter @ 15% per annum till realization of the amounts due and payable to the claimants. As per the judgment of the Reference Court, in all, additional amounts of Rs.37,762/-, Rs.30,010/-, Rs.65,740/- and Rs.76,446/- are awarded to the claimants who are the respondents in these appeals. The Government has challenged the aforesaid awards in these appeals.

4. Having heard Mr.Arun D. Oza, learned Government Pleader with Mr.A.Y.Kogje, learned Assistant Government Pleader, we do not find any substance in these appeals, more particularly when the reliance placed on the awards for the lands in village Nayka is found to be quite in order, as both the villages Nayka and Baspa are adjoining each other and nothing has been pointed out to show that the lands in these two villages have different potentiality. The time-gap between the notifications for acquisition of the lands in village Nayka and the notification for the present acquisition for the lands in village Baspa is of one year eight months and even then, the Reference Court has granted increase of only 10% which also, therefore, cannot be said to be on the higher side.

5. Moreover, the judgment of the Reference Court in respect of the lands in village Nayka has been confirmed by this Court by dismissing First Appeal Nos.3810 to 3836 of 2001 by the judgment dated 8.10.2001. In the said judgment, this Court had also applied the yield method and held that even on the basis of the yield method, the market price of the lands in village Nayka would come to Rs.9/- per sq. mtr.

The learned Government Pleader fairly states that the State Government as well as the Sardar Sarovar Narmada Nigam Ltd. have accepted the aforesaid decision of this Court in respect of the lands in village Nayka.

6. In view of the above discussion, we do not find any merit in these appeals. The appeals are, therefore, summarily dismissed.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)